

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
JACK EHRLMANTRAUT AND)	CASE NO. 06-62267
KRISTINA EHRLMANTRAUT,)	
)	JUDGE RUSS KENDIG
Debtors.)	
)	MEMORANDUM OF DECISION
)	(NOT INTENDED FOR
)	PUBLICATION)

This matter is before the court on Debtors' Application for Waiver of the Chapter 7 Filing Fee (hereafter "application") filed on November 9, 2006. On November 13, 2006, the court entered an order requesting Debtors file additional documentation to allow the court to fully assess their current financial condition. Debtors complied with the order and submitted the requested documents on November 22, 2006.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and waiver must be premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2006 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/06poverty.shtml>, the poverty income for a family of five is \$23,400.00. At 150 percent of poverty, the poverty income is \$35,100.00 annually or \$2,925.00 per month.

Form B22A (the "means test") indicates Debtors' Annualized Current Monthly Income is \$42,000.00 which is based on a monthly gross income of \$3,500.00. Based on the most recent pay stubs submitted by Debtors, the court finds the B22A is an accurate reflection of debtors' income. Debtor Jack Ehrmantraut has a gross income of \$1,549.88 biweekly from this position with the Loudonville-Perrysville school system, resulting in an approximately gross annual income of \$40,300.00. In addition, Debtor Jack Ehrmantraut is also employed by C.H. Rice Inc. According to the most recent paystub, he will gross approximately \$6,600.00, or \$550.00 per month, as a result of wages and tips. Thus, Debtors have an average annual gross income of approximately \$46,900.00.

Debtors 2005 tax return indicates an adjusted gross income of \$38,761.00 for 2005 and a refund of \$2,076.00. Form B22A, Debtors' most recent pay stubs and the 2005 tax return all clearly indicate that Debtors earn more than \$35,100.00, or 150% of poverty. Debtors therefore failed to meet the first prong of the test for proceeding *in forma pauperis*.

Debtors' failure to meet the first prong is fatal to the motion to waive the filing fee. It is necessary to prove both the first and second prongs to successfully have the filing fee waived. Since the first prong has not been satisfied, the court will not address the second prong.

In light of the above, the Court hereby **DENIES** Debtors' application to waive the filing fee. Debtors shall be permitted to pay the filing fee in installments of \$50.00 every two weeks until the fee is paid in full.¹ The first payment is due on **December 13, 2006**. Debtors shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the clerk's office OR mail a money order, payable to Clerk, United States Bankruptcy Court, to the clerk's office. Failure to pay the filing fee in accordance with this order will result in dismissal of this case.

An appropriate order in accordance with this opinion shall be entered immediately.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

DEC 05 2006

Service List:

Jack & Kristina Ehrmantraut
162 Dickerson Ave.
Bellville, OH 44813

Josiah L. Mason
153 W. Main St.
P.O. Box 345
Ashland, OH 44805-2219

¹ The payment schedule is as follows:

December 13, 2006:	\$50.00
December 27, 2006:	\$50.00
January 10, 2007:	\$50.00
January 24, 2007:	\$50.00
February 7, 2007:	\$50.00
February 21, 2007:	\$49.00